



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2018-0035; FRL-9989-31-Region 5]

Revision of Sheboygan County, Wisconsin Nonattainment

Designation for the 1997 and 2008 Ozone Standards and Clean Data

Determination for the 2008 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a request from Wisconsin to revise the designation for the Sheboygan nonattainment area for the 1997 primary and secondary ozone National Ambient Air Quality Standards (NAAQS) and the 2008 primary and secondary ozone NAAQS, by splitting the existing area into two distinct nonattainment areas that together cover the identical geographic area of the existing nonattainment area. This revised designation is supported by air quality data, emissions and emissions-related data, meteorology, geography/topography, and jurisdictional boundaries. Both areas would retain their nonattainment designation and Moderate classification. In this action, EPA is also proposing to make a clean data determination for one of the two separate areas for the 2008 ozone NAAQS.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2018-0035 at <http://www.regulations.gov>, or via email to aburano.douglas@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4489, svingen.eric@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background

II. Wisconsin's Submittal and Supporting Information

III. Proposed Actions

IV. Statutory and Executive Order Reviews

I. Background

Following promulgation of a new or revised NAAQS, EPA is required by section 107(d)(1) of the Clean Air Act (CAA) to designate areas throughout the United States as attainment, nonattainment, or unclassifiable for the NAAQS.

On July 18, 1997, EPA revised the former 1-hour ozone primary and secondary standards and replaced them with 8-hour standards at a level of 0.08 parts per million (ppm) (40 CFR 50.10). On April 30, 2004, EPA designated the entirety of Sheboygan County in Wisconsin as nonattainment for the 1997 ozone NAAQS, based on air quality data from 2001-2003 showing a

design value of 0.100 ppm at the Sheboygan Kohler Andrae monitor in eastern Sheboygan County (69 FR 23858). EPA's designation was consistent with Wisconsin's recommendation to designate the entirety of Sheboygan County as nonattainment, based on 2000-2002 data showing a violation of the 1997 ozone NAAQS at this monitor. At the time of its designation, the Sheboygan, WI nonattainment area for the 1997 ozone NAAQS was classified as Moderate with an attainment date of June 15, 2010. On March 1, 2011, EPA made a determination that the Sheboygan nonattainment area had attained the 1997 ozone NAAQS, based on monitoring data for the 2006-2008 and 2007-2009 periods (76 FR 11080). Since that determination, the area has continued to attain the standard, and the area retains its nonattainment designation and Moderate classification.

On March 27, 2008, EPA further revised the 8-hour ozone NAAQS by lowering the level of the primary and secondary standards from 0.08 ppm to 0.075 ppm, often expressed as 75 parts per billion (ppb) (40 CFR 50.15). On May 21, 2012, EPA designated the entirety of Sheboygan County in Wisconsin as nonattainment for the 2008 ozone NAAQS, based on air quality data from 2008-2010 showing a design value of 78 ppb at the Sheboygan Kohler Andrae monitor (77 FR 30088). EPA's designation was a modification of Wisconsin's recommendation to

designate the entire state as attainment, based on 2006-2008 data, despite these data showing a violation of the 2008 ozone NAAQS at this monitor. At the time of its designation, the Sheboygan County, WI nonattainment area for the 2008 ozone NAAQS was classified as Marginal with an attainment date of July 20, 2015. On May 4, 2016, EPA determined that the area qualified for a one-year attainment date extension to July 20, 2016 (81 FR 26697). On December 19, 2016, using information from the Sheboygan Kohler Andrae monitor, EPA determined that the area had failed to attain the standard by its extended attainment date, and EPA reclassified the Sheboygan County, WI nonattainment area for the 2008 ozone NAAQS as Moderate with an attainment date of July 20, 2018 (81 FR 91841). On November 14, 2018, EPA proposed to grant Wisconsin's request for a one-year attainment date extension to the Moderate attainment date for the Sheboygan County, WI nonattainment area for the 2008 ozone NAAQS to July 20, 2019 (83 FR 56781).

The eastern boundary of Sheboygan County follows the shoreline of Lake Michigan. Due to its proximity to the lake, Sheboygan County is impacted by lake breeze meteorology. This is the offshore flow of ozone precursors from nearby and upwind locations over the lake and the subsequent onshore flow of ozone from over Lake Michigan back onto land locations due to

temperature differences between the lake surface and the onshore surface. As described in greater detail in the Technical Support Document (TSD) contained in the docket for this rulemaking, ozone violations in eastern Sheboygan County are heavily influenced by lake breeze meteorology.

II. Wisconsin's Submittal and Supporting Information

On June 27, 2013, the Wisconsin Department of Natural Resources (WDNR) submitted a request for EPA to reconsider the boundary of the Sheboygan nonattainment area for the 1997 ozone NAAQS and 2008 ozone NAAQS, and reduce the area to a smaller size. Wisconsin requested that EPA reduce the area to a narrower strip of land along the eastern side of the county following the Lake Michigan shoreline. For regulatory purposes, Wisconsin recommended this boundary be composed of ten municipalities, with a varying width of roughly 3 to 9 miles. Wisconsin supported its request with a technical demonstration that estimated how ozone design values might decrease as a function of increasing distance from Lake Michigan.

In 2014, WDNR began operating a second ozone monitor in Sheboygan County at the Sheboygan Haven location, located northwest of the first monitor at the Sheboygan Kohler Andrae location. The Sheboygan Kohler Andrae and Sheboygan Haven monitors are both Federal Reference Method (FRM) monitors. The

data from these two monitors show different ozone levels, with the Sheboygan Haven monitor consistently showing lower ozone concentrations than the Sheboygan Kohler Andrae monitor. After the 2016 monitoring period was complete and the data were certified in 2017, EPA gained the ability to consider the first full design value from the Sheboygan Haven monitor for the three-year period of 2014-2016.

On October 26, 2015, EPA published a final rule revising the ozone standards to a level of 0.070 ppm (80 FR 65292). Under CAA section 107(d), following promulgation of a new NAAQS, states are required to submit area designation recommendations to EPA. On September 21, 2016, Wisconsin recommended that the entire state be designated as attainment for the 2015 ozone NAAQS, and on April 20, 2017, Wisconsin submitted additional technical information to support that request.¹ Although this proposed action addresses only the 1997 ozone NAAQS and 2008 ozone NAAQS, EPA is using the more recent technical information contained in Wisconsin's April 20, 2017, submittal to supplement Wisconsin's June 27, 2013, request to reconsider the boundary of the Sheboygan nonattainment area. The April 20, 2017, submittal

¹ On June 4, 2018, EPA designated a portion of Sheboygan County as the Sheboygan County, WI nonattainment area for the 2015 ozone NAAQS, and EPA designated the remaining portion of Sheboygan County as attainment/unclassifiable for the 2015 ozone NAAQS (83 FR 25776).

contains Wisconsin's analysis of the origins, transport, and distribution of ozone impacting Wisconsin's Lake Michigan shoreline. It includes ozone monitoring data, a conceptual model for ozone formation, and an analysis of the spatial extent of ozone concentrations exceeding the NAAQS. This submittal can be found in the docket for this rulemaking.

III. Proposed Actions

In this rulemaking, EPA is proposing to take two related actions. First, under the authority of CAA section 107(d)(3)(D), EPA is proposing to split the original Sheboygan nonattainment area for the 1997 ozone NAAQS and 2008 ozone NAAQS into two separate nonattainment areas that together cover the identical geographic area of the original nonattainment area. Second, pursuant to regulations at 40 CFR 51.1118, EPA is proposing to make a clean data determination for one of the proposed separate areas for the 2008 ozone NAAQS.

A. Split of the Sheboygan Nonattainment Area

In determining whether to approve or deny a state's request for a revision to the designation of an area under section 107(d)(3)(D), EPA believes it is appropriate to consider the same factors Congress directed EPA to consider when EPA initiates a revision to a designation of an area on its own motion under section 107(d)(3)(A). These factors include "air

quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate.” EPA incorporated similar factors into its March 28, 2000, memorandum entitled “Boundary Guidance on Air Quality Designations for the 8-Hour Ozone National Ambient Air Quality Standards” and its December 4, 2008, memorandum entitled “Area Designations for the 2008 Revised Ozone National Ambient Air Quality Standards”. These memoranda provide a framework for states and tribes to base their nonattainment area boundary recommendations for the 1997 ozone NAAQS and 2008 ozone NAAQS, respectively, and EPA believes the factors identified in these memoranda are relevant and appropriate to consider when evaluating proposed revisions to those boundaries under section 107(d)(3). The memoranda recommend that states evaluate the following factors to support nonattainment area boundary recommendations and final boundary determinations: air quality data, emissions and emissions-related data, meteorology, geography/topography, and jurisdictional boundaries.²

Based on a consideration of the information submitted by Wisconsin and other available information discussed in the TSD,

² The guidance for the 1997 ozone NAAQS identified 11 factors, and the guidance for the 2008 ozone NAAQS identified nine factors. In analyses for the final ozone designations for the 2008 ozone NAAQS, the emissions-related factors were grouped together resulting in five overall factors, and EPA is retaining that grouping in this rulemaking.

EPA believes that the air quality data, emissions and emissions-related data, meteorology, geography/topography, jurisdictional boundaries, and other air quality related considerations, as well as planning and control considerations, support the state's request to reconsider the Sheboygan nonattainment area boundary.

Wisconsin's June 27, 2013, submittal requested that EPA reduce the size of the Sheboygan area for the 1997 ozone NAAQS and 2008 ozone NAAQS. To this end, EPA proposes to split the existing area into two separate nonattainment areas to acknowledge the differences in the factors contributing to ozone levels in the separate areas, and to provide Wisconsin with additional flexibility in meeting the CAA's nonattainment area planning and emissions control requirements. This flexibility would include the ability to account for differences in air quality in the separate areas such that one of the separate areas would attain the ozone standards faster than the other.

If EPA finalizes this action as proposed, the current Sheboygan nonattainment area for the 1997 ozone NAAQS and the 2008 ozone NAAQS would be split into two distinct nonattainment areas that together cover the identical geographic area of the current area. One of the proposed separate areas, to be called the "Shoreline Sheboygan County, WI" nonattainment area, would consist of the eastern portion of the original area, including

the Sheboygan Kohler Andrae monitor. The other proposed separate area, to be called the "Inland Sheboygan County, WI" nonattainment area, would consist of the western portion of the original area, including the Sheboygan Haven monitor. The areas would be split along the following roadways, going from the northern county boundary to the southern county boundary:

Highway 43, Wilson Lima Road, Minderhaud Road, County Road KK/Town Line Road, N 10th Street, County Road A S/Center Avenue, Gibbons Road, Hoftiezer Road, Highway 32, Palmer Road/Smies Road/Palmer Road, Amsterdam Road/County Road RR, Termaat Road.

EPA's proposed nonattainment boundary for the Shoreline Sheboygan area for the 1997 ozone NAAQS and 2008 ozone NAAQS is a portion of Sheboygan County inclusive and east of the split boundary.³ EPA's proposed nonattainment boundary for the Inland Sheboygan area for the 1997 ozone NAAQS and 2008 ozone NAAQS is a portion of Sheboygan County exclusive and west of the split boundary.⁴ Both areas would continue to be designated nonattainment for the 1997 ozone NAAQS and 2008 ozone NAAQS and classified as Moderate.

3 The proposed Shoreline Sheboygan nonattainment area for the 1997 ozone NAAQS and 2008 ozone NAAQS covers the identical geographic area as the Sheboygan County, WI nonattainment area for the 2015 ozone NAAQS (40 CFR 81.350).

4 The proposed Inland Sheboygan nonattainment area for the 1997 ozone NAAQS and 2008 ozone NAAQS covers the identical geographic area as the portion of Sheboygan County that was designated as attainment/unclassifiable for the 2015 ozone NAAQS (40 CFR 81.350).

CAA section 107(d)(1)(A)(i) defines "nonattainment" as "any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet)" the NAAQS. Therefore, consistent with the statute and EPA's March 28, 2000, and December 4, 2008, memoranda, EPA will not redraw the boundaries of nonattainment areas where one portion of the area, though monitoring clean data, contributes to the nonattainment of another portion of the area. This action proposes that the available information demonstrates that the proposed Inland Sheboygan area does not contribute to a violation of the 2008 ozone NAAQS in the proposed Shoreline Sheboygan area, and thus it is appropriate that the two areas be considered separate for implementation and planning purposes. A detailed analysis supporting this demonstration can be found in the TSD contained in the docket for this rulemaking. Because this action also proposes to find that the proposed Inland Sheboygan area is attaining the 2008 ozone NAAQS, it is not necessary to consider whether the proposed Shoreline Sheboygan area contributes to a violation of the 2008 ozone NAAQS in the proposed Inland Sheboygan area, as no such violation exists. Because the 2008 ozone NAAQS retains the same general form and averaging time as the 1997 ozone NAAQS, but is set at a more protective level, EPA's analysis for the 2008 ozone NAAQS suffices as a

demonstration for an identical nonattainment area boundary revision for the less stringent 1997 ozone NAAQS.

B. Clean Data Determination for the Inland Sheboygan Area for the 2008 ozone NAAQS

An area is attaining the 2008 ozone NAAQS if it meets the 2008 ozone NAAQS, as determined in accordance with 40 CFR 50.15 and appendix P of part 50, based on three complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. To attain the 2008 ozone NAAQS, the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (ozone design values) at each monitor must not exceed 0.075 ppm. The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS). Ambient air quality monitoring data for the three-year period must also meet data completeness requirements. An ozone design value is valid if daily maximum 8-hour average concentrations are available for at least 90% of the days within the ozone monitoring seasons⁵, on average, for the three-year period, with a minimum data completeness of 75% during the ozone

⁵ The ozone season is defined by state in 40 CFR 58 appendix D. Before 2016, the ozone season for Wisconsin was April 15 through October 15. Beginning in 2016, the ozone season for Wisconsin is March 1 through October 15. See 80 FR 65292, 65466-67 (October 26, 2015).

monitoring season of any year during the three-year period. See section 2.3 of appendix P to 40 CFR part 50.

In accordance with 40 CFR 51.1118, EPA proposes to determine that the proposed Inland Sheboygan area is attaining the 2008 ozone NAAQS. This determination is based upon three years of complete, quality-assured and certified data for the 2015-2017 monitoring period. The Sheboygan Haven monitor with site ID 55-117-0009 is the only FRM ozone monitor within the proposed separate Inland Sheboygan area; the annual fourth-highest 8-hour ozone concentrations and the three-year average of these concentrations (monitoring site ozone design values) for this monitoring site are summarized in Table 1.

Table 1. Annual 4th high daily maximum 8-hour ozone concentrations and three-year average of the 4th high daily maximum 8-hour ozone concentrations for the proposed Inland Sheboygan area.

County, State	AQS Site ID	Site Name	2015 4 th high (ppm)	2016 4 th high (ppm)	2017 4 th high (ppm)	2015- 2017 average (ppm)
Sheboygan, WI	55-117-0009	Sheboygan Haven	0.067	0.074	0.070	0.070

The three-year ozone design value for 2015-2017 is 0.070 ppm, which meets the 2008 ozone NAAQS. Data for 2018 is not yet complete, quality-assured, or certified, but these data show that the proposed separate Inland Sheboygan area continues to meet the 2008 ozone NAAQS. Therefore, in this action, EPA

proposes to determine that the proposed separate Inland Sheboygan area is attaining the 2008 ozone NAAQS.

EPA will not take final action to determine that the proposed separate Inland Sheboygan area is attaining the 2008 ozone NAAQS if the design value of a monitoring site in the area exceeds the 2008 ozone NAAQS after proposal but prior to final approval of the clean data determination. EPA will not finalize this clean data determination unless and until EPA takes final action to split the Sheboygan nonattainment area into two separate areas, as proposed.

Should this action be finalized, the requirements for WDNR to submit attainment demonstrations, and associated reasonably available control measures (RACM), reasonable further progress (RFP) plans, contingency measures, and any other planning requirements related to attainment of the 2008 ozone NAAQS for the proposed Inland Sheboygan area, would be suspended for as long as the area continues to attain the 2008 ozone NAAQS. This action does not constitute a redesignation of the area to attainment of the 2008 ozone NAAQS under section 107(d)(3)(E) of the CAA, nor does it constitute approval of a maintenance plan for the area as required under section 175A of the CAA, nor does it find that the area has met all other requirements for redesignation. The proposed Inland Sheboygan area will remain

designated nonattainment for the 2008 ozone NAAQS until such time as EPA determines that the area meets CAA requirements for redesignation to attainment and takes a separate action to redesignate the area.

IV. Statutory and Executive Order Reviews

This rulemaking action proposes to revise the boundary of an existing nonattainment area by splitting it into two separate nonattainment areas that together cover the identical geographic area of the original nonattainment area, and proposes to make a determination of attainment of the 2008 ozone NAAQS based on air quality data for one of those areas. These actions do not impose additional requirements.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a "significant regulatory action" subject to review by the Office of Management and Budget.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

D. Regulatory Flexibility Act (RFA)

This action is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibilities Act (5 U.S.C. 601 *et seq.*)

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not have a substantial direct effect on one or more Indian tribes, since areas of Indian

country are not being designated as part of this action. Furthermore, these regulation revisions do not affect the relationship or distribution of power and responsibilities between the Federal government and Indian tribes. The CAA and the Tribal Air Rule establish the relationship of the Federal government and tribes in developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low income populations and/or indigenous populations as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: December 21, 2018.

James O. Payne,

Acting Deputy Regional Administrator, Region 5.

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